

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Charlie Muna Cabrera,

Petitioner,

v.

State of Nevada, et al.,

Respondents.

Case No.: 2:20-cv-01573

**Order Dismissing Second or Successive
Petition for Writ of Habeas Corpus**

[ECF No. 1-1]

This is a habeas corpus action under 28 U.S.C. § 2254. I have reviewed the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. I dismiss the action because petitioner Charlie Muna Cabrera has submitted an unauthorized second or successive habeas corpus petition.

Cabrera alleges that he was convicted in the Eighth Judicial District Court of the State of Nevada, Case No. C-11-271634-1, of two counts of lewdness with a child under the age of 14. Cabrera previously challenged his custody under the same state-court judgment of conviction in this court.¹ The court dismissed that action as untimely under 28 U.S.C. § 2244(d)(1) and denied a certificate of appealability. Cabrera appealed, and the Ninth Circuit denied a certificate of appealability.

The prior case, *Cabrera v. Neven*, makes the current petition a second or successive petition, subject to the restrictions of 28 U.S.C. § 2244(b).² Before filing a second or successive petition in this court, a petitioner first must obtain authorization from the Ninth Circuit.³

¹ *Cabrera v. Neven*, Case No. 2:14-cv-02162-JCM-GWF.

² *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009).

³ 28 U.S.C. § 2244(b)(3).

1 Cabrera understands this problem and he applied to the Ninth Circuit for authorization to
2 file a second or successive petition.⁴ On November 12, 2020, the Ninth Circuit denied Cabrera's
3 application. It would be futile to give Cabrera the opportunity to show cause by providing the
4 Ninth Circuit's authorization or to refer this matter to the Ninth Circuit under Circuit Rule 22-3.
5 The Ninth Circuit denied authorization to file this petition less than a month ago, and nothing
6 indicates that that court would reach a different conclusion today. I will dismiss this action.

7 Cabrera also filed a motion for appointment of counsel. I deny that motion because I am
8 dismissing the action under § 2244(b).

9 Reasonable jurists would not find my determination to be debatable or wrong, and I will
10 not issue a certificate of appealability.

11 I THEREFORE ORDER the clerk of the court to file the petition for a writ of habeas
12 corpus and the motion for appointment of counsel, currently in the docket at ECF No. 1-1 and 1-
13 2, respectively.

14 I FURTHER ORDER that the motion for appointment of counsel is **DENIED**.

15 I FURTHER ORDER the clerk to add Aaron Ford, Attorney General for the State of
16 Nevada, as counsel for the respondents.

17 I FURTHER ORDER the clerk to provide copies of this order and all prior filings to the
18 Attorney General in a manner consistent with the clerk's current practice, such as regeneration of
19 notices of electronic filing. No response by the Attorney General is necessary.

20 I FURTHER ORDER that this action is **DISMISSED** as an unauthorized second or
21 successive habeas corpus action under 28 U.S.C. § 2244(b). The clerk of the court is directed to
22 enter judgment accordingly and to close this action.

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⁴ *Cabrera v. Johnson*, Case No. 20-72521. *See also* ECF No. 4.

1 I FURTHER ORDER that a certificate of appealability will not issue.

2 DATED this 9th day of December, 2020.

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5 ANDREW P. GORDON
6 UNITED STATES DISTRICT JUDGE
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